

Appl. No.: 10/779,911
Amdt. dated April 4, 2008
Reply to Office Action of January 23, 2008

REMARKS/ARGUMENTS

Reconsideration and allowance of the above identified application is respectfully requested in light of the above amendments and the following remarks.

Initially, the applicant would like to acknowledge with appreciation the helpful and constructive interview granted the undersigned attorney by Examiner Painter on March 28, 2008. The following remarks and arguments represent a summary of the matters discussed at the interview.

The Present Invention

To briefly summarize, the invention of the present application is directed to a kick-out flashing 10 and associated assembly for directing water along an interface 30 between an inclined roof 34 and a vertical wall 32 and away from the wall at its lower edge. The flashing 10, which can be formed as a unitary molded plastic member, comprises a flat water impervious roof portion 12 which includes two straight edges which intersect each other at an obtuse angle A. A first flange 14 and a second flange 16 extend perpendicularly upwardly from the roof portion 12 along respective ones of the two straight edges thereof to form an intersection 20 between the roof portion and flanges, and so that the flanges form an obtuse angle when viewed in plan. Also, the two flanges are joined to each other along a continuous joint line which extends perpendicularly from the point at which the two straight edges of the roof portion intersect. Thus the flashing 10 forms a continuous passage that extends along the intersection 20 of the roof portion 12 and

Appl. No.: 10/779,911
Amdt. dated April 4, 2008
Reply to Office Action of January 23, 2008

each of the two flanges 14, 16 for receiving and guiding flowing water.

The flashing 10 is configured to be universal or reversible, which permits it to be installed in either of two alternative orientations, with one of the two flanges disposed against a vertical wall and the other flange serving to direct water flowing along the passage away from the wall, compare Figs. 3 and 4.

The important structural features of the flashing 10, which render the flashing universal or reversible include,

1) the first and second flanges 14 and 16 extend perpendicularly from the roof portion 12,

2) the two flanges 14 and 16 are rectangular and of substantially equal outline and size, and

(3) the flashing is substantially symmetric about a plane which bisects the obtuse angle A formed between the flanges and which includes the perpendicular joint line formed between the flanges.

Claim 10 of the present application defines the flashing operatively assembled at the interface between an inclined roof 34 and vertical wall 32.

The §112 Rejection

In the Official Action the Examiner rejected Claims 6, 7, and 17 as being indefinite. The phrases in question have been revised in the present amendment, and it is believed that any indefiniteness has been corrected.

Appl. No.: 10/779,911
Amdt. dated April 4, 2008
Reply to Office Action of January 23, 2008

The §102 Rejection

Claims 1-4, 10, 12-14, and 21 were rejected as being anticipated by Givens '530.

In formulating this rejection, the Examiner has referred specifically to the kick-out flashing shown in Fig. 2 of Givens, and he has contended that this flashing has first and second flanges which extend perpendicularly from respective edges of the roof portion. This contention is unsupportable, since the flange (panel) 54 is specifically defined as being "not perpendicular" to the base panel 53, note column 7, lines 66-67 of the patent. This being the case, the kick-out flashing could not possibly be universal in its application, since the panel 54 could not be disposed to be flat against a vertical wall.

In addition, Givens does not suggest a flashing having first and second flanges of substantially equal outline and size, and which permit the flashing to be universal as claimed.

During the interview, the flashing shown in Fig. 3 of Givens was also noted. This flashing could not serve as a universal kick-out flashing, since the panels 71 and 72 are significantly different in outline and size. Nor is the flashing of Fig. 3 shown in an assembly as recited in Claim 10.

In Paragraph ci on page 4 of the Official Action, and in Paragraph 11a on page 7 of the Official Action, the Examiner stated that the plane as recited in the claims may constitute any plane that bisects the flashing. In response, base Claims 1 and 10 now define the plane as containing the continuous joint line which is formed between the two panels. Thus the recited plane as now recited is specifically located.

The Examiner also discounted the symmetric recitation in

Appl. No.: 10/779,911
Amdt. dated April 4, 2008
Reply to Office Action of January 23, 2008

the claims by reason of the adjective "substantially". It is submitted that the adjective "substantially" has a well understood meaning in patent claim terminology. Specifically, the term is commonly used in patent claims to prevent avoidance of literal infringement by minor or insignificant changes. The term does not render a claim indefinite when used for that purpose, *Crosley v. Westinghouse* (DC WDPa) 59 USPQ 466. See also Section 2173.05(b)(D) of the MPEP, and the cases cited therein. Thus the claimed recitations regarding the outline and size of the two panels cannot be discounted.

Dependent Claims 5-6, 15-16, and 24 recite the use of a stop 28 which extends between the first and second flanges, and which is parallel to the roof portion, to form a channel for directing the water. The prior patent to Hunter '697 has been combined with Givens to reject these claims. Hunter however does not supply the deficiencies of Givens for the reasons noted above, and it is thus believed that these claims should also be allowed.

Claims 7, 9, 11, 17 20 and 22 have been rejected under §103 of the patent statute as being unpatentable over Givens. Here again, these claims are seen to be allowable as being dependent from allowable base claims.

Method Claims 21-25 have been cancelled in order to simplify the examination of the application and facilitate its allowance. Thus the cancellation of these claims was not for the purpose of satisfying any requirement of patentability.

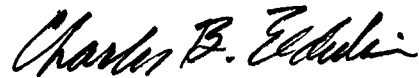
Conclusion

For the reasons set forth above, it is respectfully

Appl. No.: 10/779,911
Amdt. dated April 4, 2008
Reply to Office Action of January 23, 2008

submitted that all of the pending claims are in condition for immediate allowance, and such action is solicited.

Respectfully submitted,



Charles B. Elderkin
Registration No. 24,357

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES
PATENT & TRADEMARK OFFICE ON April 4, 2008.

LEGAL02/30762848v1